



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 5951-99  
13 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 19 June 1969 for four years at age 19. The record reflects that you were advanced to PFC (E-2) and served eight months without incident. However, during the 12 month period from February 1970 to February 1971 you received four nonjudicial punishments (NJP) for two periods of unauthorized absence (UA) totalling about 60 days and two instances of disobedience of a lawful order. After your first NJP you were counseled on the procedures for requesting a hardship discharge, but it appears you did not meet the criteria for such a separation. During the foregoing period, the record also reflects three brief periods of service in Vietnam, two of which were in support of operations in the coastal waters of Vietnam on board the USS OKINAWA.

On 22 September 1972 you were convicted by special court-martial of eight periods of UA totalling about 158 days, breach of the peace, and assault. You were sentenced to confinement at hard labor for four months, forfeitures of \$190 per month for four

months, reduction in rank to PVT (E-1) and a bad conduct discharge. On 31 October 1972 the convening authority approved only so much of the sentence that provided for confinement at hard labor for about two months, forfeitures of \$190 per month for four months, and reduction in rank. The bad conduct discharge also was approved, but it was suspended for a period of six months. The Navy Court of Military Review affirmed the findings and the sentence of the special court-martial on 16 May 1973.

During June 1973, you received two more NJPs for four periods of UA totalling about six days, disobedience, and breaking restriction.

On 30 October 1973 you submitted a request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for two periods of UA from 6-16 July 1973 and 17 September to 6 October 1973, two specifications of disobedience, and two specifications of breaking restriction. You stated that the reason you wanted to avoid a court-martial was because of family problems at home. You claimed that you tried to get a hardship discharge because your mother was sick and she needed help with your brothers and sister. You noted that you had been in trouble ever since you enlisted and would probably get into more trouble if you were not discharged. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it sufficient in law and fact. On 7 November 1973 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 16 November 1973.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, low test scores, Vietnam service, and the fact that it has been 26 years since you were discharged. The Board noted your contentions that you went UA because of twin daughters who were not being taken care of and that you requested a hardship discharge several times, but the requests were denied. Other than one entry showing that you were counseled regarding hardship discharge procedures, there is no evidence that you ever submitted a formal request with supporting documentation for a hardship discharge. Further, the record shows you were single at time of enlistment and there is no evidence that you reported the birth of any dependent children after your enlistment.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of six NJPs, a special court-martial conviction, and the fact that you accepted discharge rather than

face trial by court-martial on multiple offenses. The Board believed that you received special consideration when the convening authority suspended the bad conduct discharge awarded by the special court-martial. However, you failed to learn from your past disciplinary experiences and your misconduct continued. The Board believed that clemency was again extended when the request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director